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In re
TOC HOLDINGS CO., fka TIME OIL CO.,
Debtor.

**TRUSTEE'S MOTION FOR ORDER
APPROVING SECOND AMENDMENT
TO SEATTLE ASSET PURCHASE
AGREEMENT**

The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The relief sought in this Motion is based upon sections 105(a) and 363 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 9014.

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1 procedures motion [Dkt. # 348] and the declarations in support of the bid procedures motion
2 [Dkt. ## 350- 351, 355], the order approving Cantera as a stalking-horse bidder [Dkt. # 371], the
3 supplemental filing of the unsigned APA [Dkt. # 378], the Trustee's motion for order approving
4 the sale to Cantera [Dkt. # 418], the declaration of Edmund J. Wood in support [Dkt. # 419], the
5 Findings of Fact for Order Approving Sale of Seattle Property Free and Clear of Liens and
6 Claims and Assignment of Unexpired Lease [Dkt. # 457] (the "Findings"), and the Order
7 Approving Sale of Seattle Property Free and Clear of Liens and Claims and Assignment and
8 Assumption of Unexpired Lease [Dkt. # 458] (the "Final Order").

10 1. BACKGROUND AND RELIEF REQUESTED

11 This case was commenced by the Debtor's filing of a voluntary chapter 7 bankruptcy
12 petition on April 24, 2017. The Trustee was appointed as the chapter 7 trustee on the same date
13 and has acted in that capacity at all times since. After extensive discussions and due diligence,
14 Cantera and the Trustee negotiated the APA for the Property, more particularly described in
15 Final Order. *Wood Dec.*, ¶ 4.

17 The APA, as amended, provides that Cantera, as buyer, has not less than 180 days and
18 not more than 360 days from the Effective Date to conduct its due diligence after a final order
19 approving the sale to Cantera was entered (the "Due Diligence Period"). *See Dkt # 458-2 at 11*,
20 § 2.2. As a result, Cantera's Due Diligence Period deadline under the APA is June 9, 2019.
21 *Wood Dec.*, ¶ 8.

23 As part of Cantera's due diligence, Cantera performed the first round of additional
24 sediment testing required by the Washington State Department of Ecology ("DOE") testing in
25 addition to what had already been done by others) and provided an initial update to the Trustee
26 on September 15, 2018. *Wood Dec.*, ¶ 9. This round of sediment testing confirmed levels of

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1 contaminants above likely cleanup levels that would be applicable to sediments. DOE has yet to
2 set final, acceptable cleanup levels for sediments. *Wood Dec.*, ¶ 10.

3 Cantera has advised the Trustee that it is working closely with DOE, and that the
4 relationship between Cantera and DOE is positive and productive. *Wood Dec.*, ¶ 11. Cantera
5 has engaged Floyd|Snider as its environmental contamination consultants for the Property.
6 Floyd|Snider has prepared for Cantera a draft remedial investigation work plan to fill upland data
7 gaps, and Cantera hopes to incorporate the results into a Prospective Purchaser Agreement
8 (“PPA”) with DOE. Final execution and judicial approval of the PPA is a key term of the APA.
9 *Wood Dec.*, ¶¶ 12-13.¹

11 While negotiations with DOE are ongoing, DOE has advised Cantera that further upland
12 sediment testing is needed to support the work plan. *Wood Dec.*, ¶ 14. As a result, on or about
13 January 8, 2019, Cantera made a formal request of the Trustee to extend the expiration of the
14 Due Diligence Period to December 31, 2019 so that Cantera may perform additional sediment
15 testing and upland assessment to support critical aspects of Cantera’s negotiations with DOE for
16 the PPA. *See Wood Dec.*, ¶ 15. *See also Dkt # 458-2 at 9, § 2.6.*

18 These additional studies would necessarily extend the period required to obtain the PPA
19 beyond the June 9, 2019, deadline for the Due Diligence Period. *Wood Dec.*, ¶ 16. Cantera has
20 represented to the Trustee and believes that the additional extension of the APA’s Due Diligence
21 Period to December 31, 2019, should provide adequate time to complete the necessary testing
22 and PPA negotiations once the results from the studies are obtained. *Wood Dec.*, ¶ 17.

26 ¹ As the Court may recall, a PPA defines the scope of the purchaser’s liability and terms for
satisfying that liability with respect to cleanup of environmentally contaminated properties.

1 As consideration for the extension of the Due Diligence Period to December 31, 2019,
2 Cantera has agreed to pay the sum of \$25,000 to the estate of which \$12,500 shall be a
3 nonrefundable advance on the purchase price and \$12,500 shall be nonrefundable new money
4 that will be added to the purchase price. *Wood Dec.*, ¶ 19, Ex. A.

5 Accordingly, the Trustee is requesting that the Court authorize the Trustee to execute the
6 Second Amendment to Asset Purchase Agreement attached as **Exhibit A** to the *Wood Dec.* and
7 incorporated herein by this reference.
8

9 2. CONCLUSION

10 For the foregoing reasons, the Trustee respectfully requests that the Court enter an order
11 in the form proposed by the Trustee authorizing the extension of Due Diligence Period under the
12 APA from June 9, 2019 to December 31, 2019.
13

14 DATED this 7th day of February, 2019.

15 **FOSTER PEPPER PLLC**

16 /s/ Deborah A. Crabbe

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18 Deborah A. Crabbe, WSBA #22263
19 Attorneys for Trustee Edmund J. Wood
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